

WESTTOWN TOWNSHIP PLANNING COMMISSION MEETING AGENDA

Wednesday, January 8, 2025 – 7:00 pm

Stokes Assembly Hall – Township Administration Building
1039 Wilmington Pike, West Chester, PA

For general inquiries or questions about any of the items on this agenda, please contact the Township office either by phone (610) 692-1930 or via e-mail at administration@westtown.org.

Call to Order and Pledge of Allegiance

Adoption of Agenda

Election of Officers

Nomination for Commission Chairman

Nomination for Commission Vice-Chairman

Nomination for Commission Secretary

Approval of Minutes

Planning Commission Meeting December 18, 2024

Announcements

1. Zoning Hearing Board Request for Variance for 301 E Pleasant Grove Road Has Been Approved on December 23, 2024.
2. Zoning Hearing Board Request for Variance for 1001 S Walnut Street Has Been Approved on December 23, 2024.
3. Zoning Hearing Board Decision on Special Exception Request for 1646 West Chester Pike Will Be Rendered on January 15, 2024.

Public Comment – Non-Agenda Items

New Business

1. **Planning Commission Attendance at Board Meetings**
Review draft attendance schedule for compatibility with availability.
2. **Court of Common Pleas of Montgomery County - Case No. 2023-02216**
Summary of the case of Matthew E. Murray, et al., vs. Trace Slinkerd, Et al., involving the use of Open Space Funds for the purchase of land and construction of municipal complex on a portion of the acquired property. The case poses the legal question whether a municipality violates the Open Space Lands Act by developing property acquired under the Act in a manner inconsistent with the open-space purposes for which the property was acquired.
3. **Review List of Proposed Ordinance Amendments**
Revisit a list of proposed ordinance amendments to discuss potential additions/changes and to set up priorities for 2025.

Old Business

1. **Ordinance Amendments – Fences**
The Commission continues its discussion on potential changes to Section 1505, Fences and walls, of the Zoning Ordinance. The Township solicitor has reviewed the proposed amendments and provided several comments.

Public Comment

Reports

1. Board of Supervisors Meeting January 6, 2025 – Brian Knaub

Adjournment

Next PC Meeting:

- **January 22, 2024, 7:00 PM**

PC Representative at next Board of Supervisors Meeting:

- **Tuesday January 21, 2024, 7:30 PM – TBD**

WESTTOWN TOWNSHIP PLANNING COMMISSION MEETING MINUTES

Stokes Assembly Hall, 1039 Wilmington Pike
Wednesday, December 18, 2024 – 7:00 PM

Present

Commissioners, Russ Hatton (RH), Jack Embick (JE), Tom Sennett (TS), Brian Knaub (BK), Joseph Frisco (JF), and Kevin Flynn (KF). Jim Lees (JL) was absent. Township Manager and Director of Planning & Zoning Mila Carter was also present.

Call to Order and Pledge of Allegiance

Mr. Embick called the meeting to order at 7:00 PM.

Adoption of Agenda (TS/RH) 6-0

Mr. Sennett suggested tabling the discussion on the fence ordinance and adopting the agenda as amended. Mr. Hatton seconded. All were in favor of the motion.

Approval of Minutes (TS/KF) 5-0-1

Mr. Sennett made a motion to approve the meeting minutes from December 4, 2024. Mr. Flynn seconded. Mr. Hatton abstained. All were in favor of the motion.

Announcements

Ms. Carter made the following announcements:

1. The Township closed on acquisition of Crebilly on December 9, 2024. She noted that the main focus now is on getting the reimbursements from the Department of Conservation and Natural Resources (DCNR) Land and Water Conservation Fund (LWCF) and the County.
2. The Township paused its search for the Director of Zoning and Code Enforcement until the spring. She noted that Tracey Franey, Assistant Zoning Officer, who has been temporarily appointed to assist with zoning related matters, will continue in her role in the meantime.

Public Comment – Non Agenda Items

None.

New Business

1. 2024 Projects - Summary

Ms. Carter provided a summary of land development and subdivision projects and planning initiatives that the Planning Commission (PC) should be aware of. She stated that there is a proposal for an addition to Sarah Starkweather Elementary School. Ms. Carter pointed out that the property is zoned residential, with educational use being a legal nonconformity. Expansions to buildings with legal nonconforming use require special exception approval by the Zoning Hearing Board (ZHB). Therefore, she suggested that the applicant apply for a special exception for educational use of both Stetson Middle School and Sarah Starkweather Elementary School, so that future expansion projects will not have to go through the ZHB process. Mr. Hatton wondered whether the school district had to apply for special exception in the first place.

Ms. Carter also provided an update on the ZHB request for a variance for 1001 S. Walnut Street, with decision to be rendered next week. She further stated that Westtown School is looking to expand the dining hall.

Mr. Flynn inquired about the funeral home project. Ms. Carter stated that the project is stalled, pending a traffic study that the PC asked the applicant to conduct in order to consider their

request for access via E. Pleasant Grove Road and across Township owned property. The applicant is requesting an alternative to the traffic study due to the cost, or maybe accepting a smaller scope of a traffic study.

Updating on other projects, Ms. Carter reported that the settlement agreement has been executed for the Stokes estate. The next step is for the applicant to submit a land development application, which they have 45 days to do. She added that the Sawmill Court development is almost complete. At the Westtown School, the Oak Lane house is complete, and the Art Center is currently under construction. The solar panels are being installed.

2. Pennsylvania Supreme Court Case – Oberholzer v. Galapo

Mr. Embick gave an overview of the Pennsylvania Supreme Court Case of Oberholzer v. Galapo, which dealt with the issue of defamation and the legal validity of claims involving yard signs. The case primarily revolves around a dispute between two neighbors and whether a defamatory statement made through a yard sign can form the basis for a lawsuit. This came out in July of 2024 after almost 8 years of litigation. The case backs the right to free speech but does not prohibit litigation if the speech proves defamatory, basically you are responsible for what you are saying in your signage, and municipalities are responsible for zoning requirements, such as spacing, size and amount of signage allowed.

Old Business

1. Ordinance Amendments – Fences

As per Mr. Sennett's suggestion, the subject matter has been tabled until the next meeting.

2. Ordinance Amendments – Signs

The Chester County Planning Commission (CCPC) has reviewed the proposed 2024-08 Zoning Ordinance amendments pursuant to the provisions of the Pennsylvania Municipalities Planning Code, Section 609(e) and issued its review letter. The Planning Commission's feedback is requested. Ms. Carter has reviewed the CCPC website and other municipalities' ordinances on digital signage and provided a memo to the PC summarizing all her findings.

Mr. Sennett made a motion to adopt the changes that have been made to the sign ordinance as reflected in the draft Ms. Carter has provided.

Steve Crum, from Advent Lutheran Church, asked the PC to clarify its position on the sign ordinance and also asked if this included adopting religious institutions into the language. Mr. Sennett stated that the PC is adopting the ordinance.

Ed McFalls remotely thanked the board for adding religious institutions into the signage ordinance.

The motion passed 6-0.

Public Comment

Ed McFalls congratulated the Township on the Crebilly land acquisition.

Reports

Mr. Embick suggested for Mr. Lees to provide the BOS report from December 16th meeting at the next meeting when he is back.

Adjournment (JE/RH) 6-0

The meeting was adjourned at 7:59 PM.

Next PC Meeting:

- **January 8, 2024, 7:00 PM**

PC Representative at next Board of Supervisors Meeting:

- **Monday January 6, 2024, 7:30 PM – Tom Sennett/ Jack Embick (tentatively)**

Respectfully submitted,

Mila Carter

Township Manager and Director of Planning & Zoning

DRAFT

2025 Planning Commission Attendance* at Board Meetings

All meetings are at 7:30 pm

BOS Meeting Date	Primary Representative	Secondary Representative
January 6	Brian Knaub	Joe Frisco
January 21 (Tuesday)	Jack Embick	Tom Sennett
February 3	Jim Lees	Russ Hatton
February 18 (Tuesday)	Brian Knaub	Joe Frisco
March 3	Russ Hatton	Jack Embick
March 17	Kevin Flynn	Brian Knaub
April 7	Tom Sennett	Jim Lees
April 21	Joe Frisco	Kevin Flynn
May 5	Jack Embick	Tom Sennett
May 19	Jim Lees	Russ Hatton
June 2	Brian Knaub	Joe Frisco
June 16	Russ Hatton	Jack Embick
July 7	Kevin Flynn	Brian Knaub
July 21	Tom Sennett	Jim Lees
August 4	Joe Frisco	Kevin Flynn
August 18	Jack Embick	Tom Sennett
September 2 (Tuesday)	Jim Lees	Russ Hatton
September 15	Brian Knaub	Joe Frisco
October 6	Russ Hatton	Jack Embick
October 20	Kevin Flynn	Brian Knaub
November 3	Tom Sennett	Jim Lees
November 17	Joe Frisco	Kevin Flynn
December 1	Jack Embick	Tom Sennett
December 15	Jim Lees	Russ Hatton

* Attendance is subject to change based on scheduling conflicts/availability.

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

MATTHEW E. MURRAY, ET AL. : NO. 2023-02216
: :
vs. : :
: :
TRACE SLINKERD, PRESIDENT, ET AL. :

DECISION

This matter was tried without a jury on October 9 and 11, 2024. On the basis of the evidence presented and the arguments of counsel, the Court now makes the following Findings of Fact and Conclusions of Law.

Findings of Fact

1. Plaintiffs Matthew E. Murray and Nathaniel C. Guest are residents and taxpayers of Upper Pottsgrove Township.
2. Defendant Upper Pottsgrove Township (“the Township”) is a township of the first class.
3. The Stipulation of Agreed Facts (“Stip.”) submitted by counsel is approved, and the facts set forth in the Stipulation are adopted, as follows:

1. In 2006, by referendum, the citizens of Upper Pottsgrove Township approved a tax on themselves via Ordinance No. 406 to pay for the preservation of open space in accordance with the Pennsylvania Open Space Act, 32 P.S. § 5001, *et seq.*

2. Upper Pottsgrove Township still collects the open space earned income tax and it currently produces approximately \$555,000 per annum as a .25 earned income tax.

3. The Township of Upper Pottsgrove purchased 36 acres +/- from Thomas Smola on December 30, 2008 for \$450,000.

4. A subdivision plan for the Thomas Smola Farm had been approved by Upper Pottsgrove Township subdividing the farmhouse and

buildings from the open land. The subdivision plan was recorded at the Montgomery County Courthouse.

5. On June 2, 2008, the Commissioners of Upper Pottsgrove Township enacted Ordinance No. 425 authorizing the issuance of debt to borrow \$2,500,000 in Guaranteed Open Space Revenue Notes Series of 2008, and \$500,000 for the sewer fund.

6. The 2008 Open Space Notes were specifically slated to fund certain capital projects including, but not limited to, “The conservation and protection of open spaces, forests, woodlands, farmlands, park lands, undeveloped lands adjoining park or recreation sites, scenic areas and sites of historic, geologic or botanic interests through fee simple purchase or acquisition of development rights...”

7. On August 19, 2024, the Upper Pottsgrove Township Commissioners voted in a public meeting to authorize that bids be let for the construction of a municipal complex on the subject property.

4. During 2007, the Township transferred \$360,000 in general tax revenues from the Capital Fund to the Open Space Fund.

5. To secure repayment of the Guaranteed Open Space Revenue Notes Series of 2008 (“the 2008 Notes”), the Township primarily pledged revenues from the open-space earned income tax and, in the case of a deficiency, secondarily pledged the Township’s full faith and credit.

6. During 2008, from the proceeds of the 2008 Notes, \$2,500,000 was deposited in the Township’s Open Space Fund.

7. On December 30, 2008, at closing on the Township’s purchase from Thomas Smola of approximately 36 acres known as the Smola Farm, the Township delivered a check for the balance of the purchase price, in the amount of \$418,277.79, drawn on the Township’s Open Space Fund.

8. Because the Township, in maintaining the Open Space Fund, commingled open-space earned income tax revenues and proceeds from the 2008 Notes with general tax revenues,

and because commingled funds are fungible, it is impossible to determine how much of the purchase price was paid from open-space tax revenues and/or funds borrowed on the pledge of open-space tax revenues and how much was paid from general tax revenues.

9. Also on December 30, 2008, the Subdivision Plan was executed by Thomas Smola. In the Notes to the Subdivision Plan, item 9 read: “Lot #2 [i.e., the property purchased by the Township] is to be used for public open space subject to the requirements of Montgomery County’s Green Fields/Green Towns Program (County Open Space program).” (Ex. P-5.) In fact, the property was never included in Montgomery County’s Green Fields/Green Towns program.

10. The Deed from Mr. Smola to the Township made reference to the Subdivision Plan. (Ex. D-1.)

11. The Smola Farm parcel is divided by a public street.

12. In 2010, the Township agreed to the placement of a cellphone tower on the Smola Farm. The tower occupied approximately 2,100 square feet of the property. There was no significant public outcry or protest over this use of the property.

13. Except for the cell tower, the Smola Farm has been used solely for farming and has remained open space.

14. In 2013, the Township’s debt obligations under the 2008 Notes were refinanced by General Obligation Bonds, Series of 2013 (“the 2013 Notes”). To secure repayment of the 2013 Notes, the Township pledged its general revenues. The 2013 Notes were not explicitly secured by open-space tax revenues.

15. In 2020, the Township adopted an updated Open Space Plan, which included designations of both permanently protected and temporarily protected land. The Smola Farm was designated as permanently protected. (Ex. P-9, p. 25, fig. 3.1.)

16. It was the intention of the Township, as expressed by its citizens in the 2006 referendum and the Commissioners' actions for acquisition of the Smola Farm in 2008, and confirmed in the 2020 Open Space Plan, that the Smola Farm would remain preserved as open space and would be subject to the provisions of Act No. 1967-442 (Jan. 19, 1967), as amended by Act No. 1996-153 (Dec. 18, 1996), 32 P.S. §§ 5001-5013 ("the Open Space Lands Act" or "the Act").

17. Subsequently, the Township began planning for the construction of a new municipal complex on the Smola Farm. The complex would consist of multiple buildings, comprising Township offices, a police station, and a public works building to be used for the storage of heavy equipment and supplies, including a salt shed, and associated parking lots. The proposed complex, including the buildings, parking lots, and stormwater management facilities, would occupy approximately 3.2 acres of the Smola Farm, including 1.2 paved acres. The plan also includes the installation of a trail system on remaining open space.

18. The evidence does not suggest that the Township Commissioners acted in bad faith or with disdain for the open-space benefits provided by the Smola Farm. To the contrary, they acted on the advice of the Township Solicitor that construction of the municipal complex would be legally permissible and they planned for the enhancement of the open space on the remainder of the property.

19. Nevertheless, the evidence also shows that the construction and operation of the municipal complex would substantially detract from and materially impair the open-space

benefits of the Smola Farm in a manner inconsistent with the intent under which the property was acquired.

Discussion

This case poses the legal question whether a municipality violates the Open Space Lands Act by developing property acquired under the Act in a manner inconsistent with the open-space purposes for which the property was acquired. The question is made more difficult by the fact that the language of the Act does not *explicitly* prohibit the municipality from engaging in such development. Rather, the focus of the Act is to prescribe the manner in which property is to be acquired for open-space purposes, including how the acquisition is to be financed. *See, e.g., Pennsbury Vill. Assocs., LLC v. McIntyre*, 11 A.3d 906, 911 n.5 (Pa. 2011) (“The Open Space Lands Act provides a mechanism for funding open space land acquisition and preservation.”). Nevertheless, a review of the statute as a whole makes clear the legislative intent that when a government unit acquires land for open-space purposes under the Act, it may not use the land for contrary purposes.

At the outset, section 1 of the Act sets forth its legislative purpose:

It is the purpose of this act to clarify and broaden the existing methods by which the Commonwealth and its local government units may *preserve* land in or acquire land for open space uses. The Legislature finds that it is important to *preserve* open space and to meet needs for recreation, amenity, and conservation of natural resources, including farm land, forests, and a pure and adequate water supply. The acquisition and resale of property interests authorized by this act are hereby declared to be for the public benefit, for the advancement of the public health, safety, morals and general welfare of the citizens of the Commonwealth, and for the promotion of sound land development by *preserving* suitable open space and concentrating more dense development in nearby areas.

32 P.S. § 5001 (emphasis added).

Section 2(1) of the Act defines “[o]pen space benefits” as follows:

The benefits to the citizens of the Commonwealth and its local government units which result from the *preservation or restriction of the use* of selected predominantly undeveloped open spaces or areas, including but not limited to: (i) the protection and conservation of water resources and watersheds, by appropriate means, including but not limited to preserving the natural cover, preventing floods and soil erosion, protecting water quality and replenishing surface and ground water supplies; (ii) the protection and conservation of forests and land being used to produce timber crops; (iii) the protection and conservation of farmland; (iv) the protection of existing or planned park, recreation or conservation sites; (v) the protection and conservation of natural or scenic resources, including but not limited to soils, beaches, streams, flood plains, steep slopes or marshes; (vi) the protection of scenic areas for public visual enjoyment from public rights of way; (vii) the preservation of sites of historic, geologic or botanic interest; (viii) the promotion of sound, cohesive, and efficient land development by preserving open spaces between communities.

Id. § 5002(1) (emphasis added).

Consistent with these provisions, section 5 of the Act, in stating the purposes for which a local government unit may acquire property under the Act, repeatedly uses the terms “protect” and “conserve.” *Id.* § 5005(a)(1)-(8), (c).

Further, to raise revenue for the acquisition of property under the Act, the local government unit must first conduct a referendum of its voters to authorize a new tax dedicated to the acquisition and preservation of open space. *See* Act § 7.1, 32 P.S. § 5007.1. Thus, if the referendum passes, the municipality enjoys a new source of revenue, but that revenue is restricted in its use. If a municipality could acquire land by using this open-space revenue, but then decide to develop the land for another purpose, it would betray the decision of the public to be subject to an additional tax for a single limited purpose.

Perhaps the clearest indication of legislative intent on this issue is section 10 of the Act, which provides an elaborate procedure that a local government unit must follow if it “determines that it is essential for the orderly development of an area to terminate or sell open space property interests acquired under this act.” *Id.* § 5010(b). The prescription of specific conditions that

must be met before a municipality may “terminate . . . open space property interests” makes clear that the governing body of a municipality may not simply proceed on its own with development inconsistent with the open-space purposes for which the property was acquired. If the municipality were free to do so, then the requirements of section 10 would be optional — a result contrary to the statutory language.

In view of the clear, albeit implicit, requirement of the Open Space Lands Act that a municipality acquiring property for open-space purposes must continue to abide by such purposes, and in view of the evidence showing that development of the proposed municipal complex would be contrary to the purpose for which the Smola Farm was acquired, the arguments put forward by the Township are not persuasive. Specifically, it is immaterial that open-space tax revenues were not devoted directly to the payment of the purchase price for the Smola Farm, but rather were used to secure the repayment of the debt incurred for the acquisition. The Act specifically authorizes the use of open-space tax funds to “retire the indebtedness incurred in purchasing interests in real property or in making additional acquisitions of real property for the purpose of securing an open space benefit or benefits under the provisions of this act.” Act § 7.1(a)(1), 32 P.S. § 5007.1(a)(1). It is likewise immaterial that the “Open Space Fund” from which the purchase price was paid included both the proceeds of the 2008 Notes and general tax revenues that were transferred into that Fund. It was the Township that made the decision to commingle such funds in a single account, and having done so, it cannot complain that the Plaintiffs could not show which funds in that account were devoted to the purchase of the Smola Farm.¹

¹ Courts have repeatedly held that when a defendant makes it impossible for a plaintiff to sustain what would normally be the plaintiff’s burden of proof, then the burden may shift to the defendant. *See, e.g., Sheldon v. Metro-Goldwyn Pictures Corp.*, 309 U.S. 390, 403 (1940) (on the determination of what portion of the defendant’s profits were due to its copyright infringement, where “the act of the defendant

Finally, the fact that the property was previously developed through the installation of a cellphone tower does not alter the Township's obligation to maintain the Smola Farm as open space. The record does not reveal why neither the present Plaintiffs nor any other member of the public protested this development, which may have been considered *de minimis*. In any event, there is no showing that the cell tower largely deprived the Smola Farm of its open-space character, such that there is nothing further worth preserving. To the contrary, the fact that the Township might have once violated the open-space restriction by installing a cell tower on a 2,100-square-foot portion of the property does not open the door to a subsequent development of more than three acres to install a multi-building complex that would significantly alter the nature of the property.

Conclusions of Law

1. When a local government unit uses or pledges open-space tax funds to acquire real property for open-space benefits under the Open Space Lands Act, it must continue to use the property only for open-space purposes.

2. The proposed municipal complex that the Township plans to construct on the Smola Farm would violate the requirements of the Act. Plaintiffs are entitled to an injunction to prevent such violation.

3. In view of the above conclusions, it is unnecessary to determine whether the proposed development would also violate Act No. 1959-1772 (Dec. 15, 1959), 53 P.S. §§ 3381-3386, known as the Donated or Dedicated Property Act.

had made it not merely difficult but impossible to carry the burden of apportionment . . . , the law placed the loss on the wrongdoer") (quotation marks omitted); *Siedlecki v. Powell*, 245 S.E.2d 417, 420 (N.C. App. 1978) (refusing to "impose upon plaintiff a burden of proof made impossible by defendants' deliberate conduct relating to their accounting procedures").

4. Plaintiffs have not established an entitlement to modification of the Deed to the Smola Farm by addition of an express restriction on development. The restriction to be enforced in this case arises under the Open Space Lands Act and not under the Agreement of Sale between Mr. Smola and the Township.

5. There is no statutory or otherwise established basis for an award of attorney fees to Plaintiffs in this case. Even if the Court had discretion to award attorney fees, it would not do so under the circumstances presented.

Decision

AND NOW, this 18th day of October, 2024, on the basis of the foregoing Findings of Fact and Conclusions of Law, a Decision is hereby **RENDERED** in favor of Plaintiffs Matthew E. Murray and Nathaniel C. Guest and against Defendant Upper Pottsgrove Township (“the Township”) for the following relief:

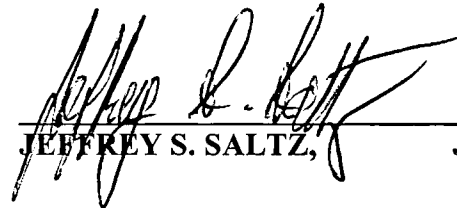
(a) a declaratory judgment that the property designated by the Township as the Smola Farm is subject to the restrictions and limitations of Act No. 1967-442 (Jan. 19, 1967), as amended by Act No. 1996-153 (Dec. 18, 1996), 32 P.S. §§ 5001-5013, commonly known as the Open Space Lands Act, and may be used only for purposes consistent with that Act; and

(b) an injunction against the Township and all persons acting under the authority of the Township, including its Commissioners, from proceeding with the solicitation or acceptance of bids for the construction of the proposed municipal complex on the Smola Farm and from otherwise proceeding with the construction or installation of the proposed municipal complex on the Smola Farm.

This Decision is rendered pursuant to Rule 1038 of the Pennsylvania Rules of Civil Procedure and does not constitute the final determination of the Court. No declaratory or

injunctive relief is ordered at this time, unless and until judgment is entered on this Decision in accordance with Rule 227.4(1) of the Pennsylvania Rules of Civil Procedure.

BY THE COURT:



JEFFREY S. SALTZ, J.

efiled on: 10-18-24
copies emailed on: 10-18-24 to:
Andrea Grace, Esquire, Court Administration – Civil Division
Michael Jorgensen, Court Administration – Civil Division

List of Potential Amendments

Revised: January 3, 2025

	No. (Origination year-month)	Chapter	Section/Name	Description of Changes/Status	Source	Priority
1	2023-08	170 Zoning	1505 Fences	Considerations for deer fences and other changes (height of fences?); MC to draft proposed ordinance language for review.	MC	1
2	2024-09	170 Zoning/Other	TBD	Considerations for pipeline safety	JE	1
3	2017-08.4	170 Zoning	1509 Storage	PC worked with Mr. Snook to revise existing storage regulations to address modular storage units and self-storage facilities, self-storage units, warehouse, junkyards, trailers, boats, human or animal remains, RVs, generators, and temporary accessory storage. The last revisions were made in May 2021. MC will review the draft, make changes as needed and bring it back to the PC for review and comment.	PC (EA)	1
4	2023-12.5	170 Zoning	1618 Renewable energy systems	Consider specific setbacks for accessory ground-mounted solar; bldgs and structures on historic resources list; conflicts with SW ordinance; setbacks are too extreme?;	MC	1
5	2023-12.1	170 Zoning	2400 Historic Preservation	Proposed changes to require review by the HC of all incoming applications,	HC	1
6	unk.	149 SLDO	300 Application Procedures	Numerous administrative updates related to plan submission, # of copies required (currently 16 hard copies), correct outdated terminology. Also want to include standards for plan revision which don't exist now to better formalize review procedures/timeline.	MD	1
7	2023-09	149 SLDO	500 Sketch Plan	Sketch plan requirements and process can be improved	MC	1
8	2017-09.1	149 SLDO	910 Street Construction	1. Revise to remove the reference to "PennDOT Seldom Used Specifications 1983" and more appropriately Reference PennDOT Publication 46. 2. 149-910.D: This section could be revised to remove the reference to Bituminous Surface Course ID-2A. This section should be completely re-written to include a modern specification of the Superior Asphalt Paving System (Superpave). Bob Flinchbaugh provided draft language that was reviewed by Mark Gross in 2021.	MT (KM)	1
9	2017-05	170 Zoning	Article IX Flexible Development	1. When the Flexible Development option was added to the Ordinance, it included an extensive Open Space description -170-907. It was decided to refer the Open Space requirements in all other districts to this section in order to avoid repetition. 2. 170-904.C There are no lot size limits in Flex. For single-family dwellings, the only control of lot size is the requirement that there can be only 4 lots per acre in the area used for single-family dwellings (smallest lots could be just under 11,000 square feet). 3. 170-904. E. (3). (10) Setbacks - The only setback regulations for dwellings in Flex are 30 feet behind the curb line and 30-foot separation between structures. This applies to decks, sheds, and even dwellings. (Not to swimming pools, however.)	PC (EA)	1
10	2023-10	170 Zoning	1511 Establishment of future right-of-way widths for streets	Consider changing the language to only regulate dedicated ROWs	ZHB Solicitor	
11	2017-09.12	170 Zoning	1600 Supplemental Regulations	1. Parking has become popular for compact cars, oversized vehicle, electric vehicle, seniors citizen and new or expecting parents, multi-family, and residential uses. (rideshare parking); 2. Truck Turning Templates are not required by ordinance and should be added to the preliminary/ final plan set requires. All vehicles for emergency response, delivery, trash, and recycling should be provided to major applications. 3. Consider adding MS4 Assist Regulations Recall the Maneri Property 1126 Kolbe Lane, Rustin and Crebilly CU 4. Consider adding Drive Thru Regulations Recall Dunkin' Donuts	MT (KM)	
12	2023-03	170 Zoning	1603 Accessory uses and structures	1. Attached vs. Detached structures connected via breezeway – how do we want to define them and how it relates to the size of garages and setbacks; 2. 1603.B Uses accessory to agriculture: Potential to revise the language to make it more specific; "50% of products"; 3. Consider provisions for enclosed garden structures (high visibility on all sides); 4. Consider clarifying the definition of ADU; permanent food preparation facilities; laundry areas?	MC	
13	2023-05	170 Zoning	1605 Home occupations	1. Consider adding beekeeping as permitted minor home occupation; 2. Consider increasing the size of the sign for major home occupations at the intersection of two major roadways; 3. Revise 1605.A(1) that states "within the dwelling"; occupations within detached structures ?	MC	
14	2023-10	170 Zoning	1614 Bus shelters	Connection to existing sidewalk, pedestrian facility req.	MC	
15	2019-03	170 Zoning	1700 Off-street parking	1. Times, circumstances, streets, locations, rideshare parking locations (WE); 2. Handicapped parking - increase the number of req. handicapped spaces due to increase in aging population (BOS)	Twp	
16	2017-08.5	170 Zoning	1513.B Interior circulation and streets minimum widths	Consider reducing the minimum paved width of streets on low traffic volume streets.	PC (EA)	

17	2019 -1	170 Zoning	201 Definitions	<p>1. "Boarding home(s)";</p> <p>2. "All usable space within a dwelling unit without netting out any space unless it is not capable of being lived in." (Examples of spaces to exclude: hvac closets, unfinished basements, unfinished attics);</p> <p>3. Business or trade school;</p> <p>4. Commercial vehicle and equipment;</p> <p>5. "building area" and "floor area" to include more details about "breezeway"</p> <p>6. Definition of impervious surface; consistency with SW ordinance (pervious pavement, gravel areas and etc.)</p> <p>7. Consider adding entertainment, fast-food, and/or restaurant (parking requirements);</p> <p>8. The definition of "Lot Area" and "Tract Area" are treated differently in Zoning. Definition of lot area (proposed): The acreage contained within the property lines of a lot, as defined in the deed or as shown on an approved subdivision plan. Such acreage shall be exclusive of the following:</p> <p>A. Any area used for gas, oil, natural gas, electric, or communications transmission facilities, whether below or aboveground, that do not serve the lot or lots traversed.</p> <p>B. Any area within a street or other transportation right-of-way, existing or proposed.</p> <p>C. Any area within a permanent drainage easement.</p> <p>D. Every lot created by subdivision shall have a contiguous and uninterrupted area equal to 75% of the minimum lot area required by the applicable zoning district, which is unencumbered by wetlands, one-hundred-year floodplains, steep slopes and/or stormwater management basins/facilities.</p>	PC	
18	2023-08	149 SLDO	201 Definitions	<p>1. Definition of land development; minor land development (?);</p> <p>2. Add definition for specimen trees</p>	MC	
19	2023-04.1	170 Zoning	2103 Hearings (ZHB)	Notice to multi-family dwellings, condos process (multiple units)	ZHB Solicitor	
20	unk.	170 Zoning	401 Floodplain Regulations	Based on comments received during review in 2017, PC members indicated a desire to make some changes with Beth Uhler' assistance		
21	2019-04	149 SLDO	405 Commencement of development	Add times and days of the week, 149-404?	PC	
22	unk.	170 Zoning	907 Open space standards	While there are requirements for some portion of the Open Space be useable for active recreation, storm water management often occupies a significant area. Revising the open space definition and regulations has been suggested. Establishment of an Open Space fund, clarification of in lieu of fees		
23	2001-08.2	149 SLDO	915 Driveways	PC has suggested on several occasions that the Board adopt a freestanding driveway ordinance.	MT (KM)	
24	unk.	149 SLDO	924 Existing trees	§149-924.D which would require a separate tree protection plan.	MT (KM)	
25	unk.	149 SLDO	925 Landscaping requirements and standards	<p>1. Add provisions for setbacks and size of trees from power lines;</p> <p>2. Street Trees within 5 feet of property and within 10 feet of side lot lines; Rustin Residential: §149-925-1.5 – Street Trees within 10 feet of side lot lines. (1.5)</p>	MT	
26	2017-09.5	149 SLDO	Administrative Preliminary or Final Waivers	Modern applications contain so much information that the boundary between preliminary and final has become almost negligible as far as engineering detail. Rarely have I seen a request for a waiver from preliminary to prelim/final denied.	MT (KM)	
27	2001-08.1	170 Zoning	Buffers & Screening - MU and R-3 Districts	Present regulations generally require buffers between districts rather than between uses. (Except for commercial vs residential).	PC (EA)	
28	2017-09.11	149 SLDO	Design standards	Consider adding a Belgian Block Section of Code with detail.	MT (KM)	
29	unk.	170 Zoning	Uses - M-U District	Possibility for problems in MU and R-3 districts where residential and non-residential uses are permitted. The MU District is presently developed as residential except for one tract (5 acres?) currently industrial, which could be redeveloped for any use permitted in the C1 District.		

Memo

To: Planning Commission
From: Liudmila Carter, Township Manager
Date: January 3, 2025
Re: Ordinance Amendments – 170-1505 Fences and Walls

Enclosed is 1505 Fences and Walls of the Zoning Ordinance with tracked changes as per previous feedback from the Planning Commission feedback and comments from the Township solicitor.

In summary, the following changes are proposed:

- Definitions were added for “garden fence” and “open fence”;
- Reorganization of provisions into those applicable to all fences, applicable to fences on residential property, and those only applicable to fence on nonresidential properties;
- Change from regulating fences within the building setback area to regulating fences within yards;
- Clarification for when fence permit is required;
- Additional permit submission requirements, including a more detailed plot plan, fence and fence gate dimensions, and fence foundations specifications;
- Additional requirements for fence gates;
- Additional setback from the future right-of-ways of 10 feet;
- Additional setback from side and rear lot lines of 1 foot;
- Clarification on what constitutes the finished side;
- Decrease of height for permitted height for fences on residential lots within the front yard from 5 feet to 4 feet;
- Prohibition on using razor, barbed wire, spikes or electric fencing;
- New requirements for garden fences.

The Planning Commission feedback is requested.

Revision 2 – November 2024

The following Code does not display images or complicated formatting. Codes should be viewed online. This tool is only meant for editing.

§170-201 **Definitions**

FENCE

Any freestanding and uninhabited structure consisting of wood, glass, metal, plastic, wire, wire mesh, or masonry, singly or in combination with other materials, 2 1/2 feet high or higher, erected to secure or divide one property from another or part of a property from a remaining part, to assure privacy, to protect the property so defined, or to enclose all or part of the property; a freestanding masonry wall is considered a fence.

GARDEN FENCE

An open fence that is fully encompassing no more than 25% of the lot, with no buildings or structures, which is actively used to grow vegetables, fruit, herbs, or flowers for personal consumption (i.e. not retail).

Commented [RJ1]: Change to "fence, garden"

OPEN FENCE

A fence that has at least 50% of its surface area as open space, which allows for better visibility from both inside and outside the property being fenced. Such fence type may include split-rail, post and rail, picket fence and chain link fence.

Commented [RJ2]: Change to "fence, open"

Commented [RJ3]: The utilization of a split-rail fence for a garden fence seems unlikely.

YARD

An open, unoccupied space on the same lot with a building or other structure or use.

YARD, FRONT

A yard extending the full width of the lot along the front lot line and extending in depth from the front lot line to the nearest point of any part of a structure on the lot. On a corner lot, the Zoning Officer shall have the authority to determine which yard is the front yard, based upon the predominate pattern in the area.

YARD, REAR

A yard extending the full width of the lot along the rear lot line and extending in depth from the rear lot line to the nearest point of any part of a structure on the lot.

YARD, SIDE

A yard extending the full depth of the lot along a side lot line and extending in width from such side lot line to the nearest point of any part of a structure on the lot.

§ 170-1505 Fences and walls.

[Amended 3-3-2003 by Ord. No. 2003-2; 2-6-2012 by Ord. No. 2012-1]

A. Permit requirements. A permit is required for the installation or replacement of all fences exceeding 40 feet in length in accordance with the following:

- (1) ~~A~~ A permit is not required for a fence in the Township District.
- (2) ~~B.~~ A permit is not required for the installation of all other fences exceeding 40 feet in length and within the front, rear or side setback areas, except fences enclosing agricultural uses, or those constructed in conjunction with a permit for the installation of a swimming pool, or those meeting the definition of garden fence under this Chapter.
- (3) The following shall be submitted with a permit application:
 - a. A plot plan locating the proposed fence and fence gates shall be submitted with the permit application. The plot plan may be an informal sketch plan, not necessarily to exact scale, showing the property boundaries, all buildings and structures, right-of-ways and easements, and accurately locating the proposed fence.
 - b. Fence dimensions, including height and width of fence gates.
 - c. Details on fence foundation (such as concrete footings, t-posts, post spikes and post anchors), fence type and fence materials.
- ~~(4)~~ The property owner or contractor shall notify the PA One Call System before installation and/or permit application submission beginning construction of the fence.

Commented [RJ4]: The very first thing below “a permit is required” is “a permit is not required.” We recommend moving these below the current 3 and 4.

Commented [RJ5]: Same as the immediately above comment. You could make current 1 and 2 exceptions to the permit requirement and combine them.

Commented [RJ6]: We recommend making this the first thing below “A.”

Commented [RJ7]: Maybe “A plot plan of the subject property that accurately depicts the following: the boundaries of the property, rights-of-way, easements, structures, proposed fence, and proposed fence gates. The plot may be an informal sketch plan, not necessarily to exact scale.”

Commented [RJ8]: We recommend making this the second thing below “A.” Does the Township want any proof associated with this? If yes, you should list that.

Commented [RJ9]: We believe the lettering is off.

Commented [RJ10]: General standards applicable to all fences?

E. General standards.

- (1) A fence or wall within the front yard shall have an opening or an operable gate with a minimum width of 3 feet. There shall be a minimum of one opening or operable gate ~~for~~ along each street frontage.
- (2) A fence or wall within the front yard shall be set back a minimum of 10 feet from the future right-of-way.
- (3) A fence or wall located within a yard other than a front yard shall be set back from side and rear lot lines a minimum of one foot. The property owner is responsible for maintaining the area between the fence line and property lines.
- (4) If one side of a fence is smoother or more finished than the other side of the fence, the smoother or more finished side shall face onto any abutting lot or public road. The finished side shall also be considered the side without structural support members.
- (5) An open fence higher than six feet is permitted to enclose a recreation facility or

Commented [RJ11]: As a practical matter, this makes the day-to-day very difficult. Someone would have to go onto their neighbor’s property to maintain. If on a property line, make property owners submit proof (e.g. survey plan of location)

Commented [RJ12]: Township should be ok with both active and passive recreation facilities as no distinction is made here.

ground mounted solar energy system if the fence is integral to such use and complies with the required building setbacks applicable to the zoning district.

Commented [RJ13]: If ground mounted solar energy systems are regulated as indicated in number 13 below, do we want to include it here? Put another way, are all of the regulations for fences associated with solar energy systems in §170-1618?

(6) Where landscaping is required as a buffer around a use, all fencing shall be located on the inside of the landscaping, except for an open fence if constructed of wood or materials with a similar appearance.

(7) This section shall not restrict retaining walls that are necessary to hold back slopes, nor walls of a building that are permitted by this chapter.

(8) No fence or wall shall be constructed on a property in any location that would obstruct a permanent easement, unless permission is granted in writing by the easement holder.

(9) Fences and their support materials shall be placed entirely within the boundaries of the property being fenced. If the property owner cannot demonstrate that the property line location is known and identified in the field, as well as on the permit plan, the Zoning Officer may require a survey of the property completed by a professional land surveyor to determine the precise limits of the property.

(10) Any fence or wall which, in judgement of the Zoning Officer, is unsafe, dangerous or a threat to the public health and safety shall be repaired, replaced or removed at the expense of the property owner.

(11) Regulations for fencing associated with wireless communications facilities are set forth in Article XXV, Wireless Communications Facilities, and those provisions are the applicable standards to apply to such fencing. [Added 6-15-2015 by Ord. No. 2015-6; amended 4-4-2022 by Ord. No. 2022-04]

(12) Regulations applicable to fencing associated with surface land uses affiliated with transmission pipelines are set forth in § 170-1612A(3)(b). [Added 7-17-2017 by Ord. No. 2017-2]

(13) Regulations applicable to fencing associated with principal solar energy systems are set forth in § 170-1618C(1).

Commented [RJ14]: We think these could be written more clearly. Do you mean the provisions of Article XXV, §170-1612.A(3)(b), and §170-1618(c)(1) preempt or supersede the provisions contained in this section to the extent they conflict? Or, is this solely to let members of the public know that these regulations exist?

F. Fences and walls located on lots with residential use. In addition to general standards described in §170-1505.E, in a residential district or a residential or agricultural lot in another zoning district fences and walls on lots with a residential use shall comply with the following:

- (1) A fence located within the ~~required front building setback area of any yard~~ shall ~~be an open fence and shall~~ have a maximum height of ~~five four~~ feet ~~and shall have a ratio of open to structural areas of at least 1:1 (such as a split rail or picket fence).~~
- (2) A wall within the ~~required front building setback area yard~~ shall not exceed a height of three feet.
- (3) A fence or wall located within ~~a yard other than a front yard a minimum principal~~

~~building setback area, other than the minimum front building setback, shall have a maximum height of six feet. (D) decorative post tops may extend above six feet.~~

~~(4) No razor, barbed wire, spikes or electric fencing shall be placed upon a fence or wall.~~

~~(5) A gGarden fence shall be permitted within side and rear yards, measuring no more than eight feet in height, and shall meet the requirements of this chapter. (4) If one side of a fence is smoother or more finished than the other side of the fence, the smoother or more finished side shall face onto any abutting lot or public road.~~

Commented [RJ15]: We caution against the height.

G. Fences and walls located on lots with nonresidential use. In addition to general standards described in §170-1505.E, fences and walls on lots with a nonresidential use shall comply with the following:

~~(1) (1) (5) A fence higher than six feet is permitted to enclose a recreation facility such as a tennis court if the fence is integral to the recreational use and complies with the required building setbacks applicable to the zoning district.~~

~~D. On any nonresidential lot, a A fence or wall shall not exceed a height of five feet within the front yard minimum front building setback area and eight feet in any other -yard minimum principal building setback area.~~

Commented [RJ16]: We caution against the height.

~~E. Where landscaping is required as a buffer around a use, all fencing shall be located on the inside of the landscaping, except for fencing that is mostly open (such as split rail or picket fencing) and is constructed of wood or materials with a similar appearance.~~

~~F. This section shall not restrict retaining walls that are necessary to hold back slopes, nor walls of a building that are permitted by this chapter.~~

~~G. No fence or wall shall be constructed on a property within the existing or future right of way of a street, nor in any location that would obstruct a permanent easement.~~

~~H. Fences and their support materials shall be placed entirely within the boundaries of the property being fenced. If the fence is to be located on or near the property line and the property owner cannot demonstrate that the property line location is known and identified in the field, as well as on the permit plan, the Township may require a survey of the property.~~

~~I. The repair or replacement of any fence that currently exists as of the date of the adoption of this chapter shall not require a permit.~~

~~J. Regulations for fencing associated with wireless communications facilities are set forth in Article XXV, Wireless Communications Facilities, and those provisions are the applicable standards to apply to such fencing. [Added 6-15-2015 by Ord. No. 2015-6; amended 4-4-2022 by Ord. No. 2022-04]~~

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~~K. Regulations applicable to fencing associated with surface land uses affiliated with transmission pipelines are set forth in § 170-1612A(3)(b). [Added 7-17-2017 by Ord. No. 2017-2]~~

DRAFT